

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

[REDACTED]
COUNSEL: NONE

NOV 13 1998

[REDACTED]
HEARING DESIRED: YES

Applicant requests that his discharge be changed to a medical retirement. Applicant's submission is at Exhibit A.

The appropriate Air Force offices evaluated applicant's request and provided advisory opinions to the Board recommending the application be denied (Exhibit C). The advisory opinions were forwarded to the applicant for review and response (Exhibit D). As of this date, no response has been received by this office.

After careful consideration of applicant's request and the available evidence of record, we find insufficient evidence of error or injustice to warrant corrective action. The facts and opinions stated in the advisory opinions appear to be based on the evidence of record and have not been rebutted by applicant. Absent persuasive evidence applicant was denied rights to which entitled, appropriate regulations were not followed, or appropriate standards were not applied, we find no basis to disturb the existing record.

Accordingly, applicant's request is denied.

The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

The Board staff is directed to inform applicant of this decision. Applicant should also be informed that this decision is final and will only be reconsidered upon the presentation of new relevant evidence which was not reasonably available at the time the application was filed.

Members of the Board Mr. Robert D. Stuart, Mr. Henry Romo, Jr., and Mr. Richard A. Peterson considered this application on 15 October 1998, in accordance with the provisions of Air Force Instruction 36-2603 and the governing statute, 10 U.S.C. 1552.



ROBERT D. STUART
Panel Chair

Exhibits:

- A. Applicant's DD Form 149
- B. Available Master Personnel Records
- C. Advisory Opinions
- D. AFBCMR Ltr Forwarding Advisory Opinions

July 9, 1998
98-00389

MEMORANDUM FOR AFBCMR

FROM: BCMR Medical Consultant
1535 Command Drive, EE Wing, 3rd Floor
Andrews AFB MD 20762-7002

SUBJECT: Application for Correction of Military Records
[REDACTED] [REDACTED]

This request for records correction is not filed in a timely manner, as 27 years have passed since the applicant was discharged.

Applicant's entire case file has been reviewed and is forwarded with the following findings, conclusions and recommendations.

REQUESTED ACTION: The applicant was discharged with 20% disability severance pay on 17 August 1971 after serving 2 years, 2 months, and 13 days on active duty for congenital problems. He applies now to change his medical discharge to a medical retirement.

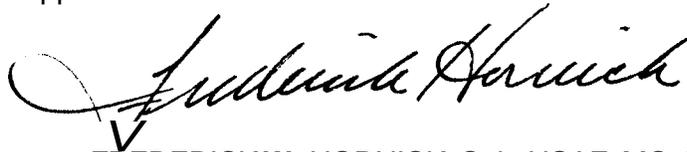
FACTS: The applicant suffered foot pain from congenital malformation of his feet and toes which resulted in his inability to perform assigned duties even after cross-training to a different career field. He met a Medical Evaluation Board on 15 July 1971 and was referred to the Physical Evaluation Board on 23 July 1971. This Board found him 30% disabled by his problems and deducted 10% for the preexisting nature of the deformities as is appropriate for congenital (from birth) defects. Their recommendation for separation with severance pay at 20% disability was concurred with by the applicant and upheld through the Air Force Personnel Board on 2 August 1971.

DISCUSSION: There is no evidence to support a higher rating at the time of separation. His case was properly evaluated, appropriately rated and received full consideration under the provisions of AFR 35-4. Action and disposition in this case are proper and reflect compliance with Air Force directives which implement the law.

Once an individual has been declared unfit, the Service Secretaries are required by law to rate the condition based upon the degree of disability at the time of permanent disposition and not on future events. No change in disability ratings can occur after permanent disposition, even though the condition may become better or worse. However, Title 38, USC authorizes the VA to increase or decrease compensation ratings based upon the individual's condition at the time of future evaluations.

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RECOMMENDATION: The BCMR Medical Consultant is of the opinion that no change in the records is warranted and the application should be denied.

A handwritten signature in cursive script, reading "Frederick W. Hornick". The signature is written in black ink and is positioned above the typed name.

FREDERICK W. HORNICK, Col., USAF, MC, FS
Chief Medical Consultant, AFBCMR
Medical Advisor SAF Personnel Council

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DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE, TEXAS

24 Jul 98

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DPPD
550 C Street West Ste 06
Randolph AFB TX 78150-4708

SUBJECT: Application for Correction of Military Records [REDACTED]
[REDACTED]

REQUESTED ACTION: Applicant requests that his Aug 71 disability discharge be set aside and that he be given a disability retirement.

FACTS: Applicant was involuntarily relieved from active duty for physical disability under the provisions of AFM 35-4 upon completion of two years, two months, and thirteen days of active duty. At the time of his disability discharge on 17 Aug 71, he received \$1251.60 in disability severance pay. Member's application is considered untimely under the statute of limitations.

DISCUSSION: The purpose of the military disability system is to maintain a fit and vital force by separating members who are unable to perform the duties of their office, grade, rank or rating. Members who are separated or retired for reason of physical disability may be eligible, if otherwise qualified, for certain disability compensations. Eligibility for disability processing is established by a Medical Evaluation Board (MEB) when that board finds that the member may not be qualified for continued military service. The decision to conduct an MEB is made by the medical treatment facility providing care to the member.

An MEB was convened at Sheppard AFB, Texas on 15 Jul 71 and referred to the Informal Physical Evaluation Board (IPEB). On 23 Jul 71, the IPEB found the member unfit for continued military service for a diagnosis of "Pes cavus, bilateral, moderately severe and symptomatic and clawed toe deformity digit two through five bilaterally, moderately severe and symptomatic, EPTS with service aggravation." His medical condition was rated at 30 percent disability rating minus a 10 percent EPTS factor. The IPEB recommended that the member be discharged with severance pay with a 20 percent disability rating. Member concurred with the findings and recommendation of the IPEB and, subsequently officials within the Office of the Secretary of the Air Force directed that the applicant be discharged with severance pay and a 20 percent compensable disability rating under the provisions of Title 10, USC, 1203.

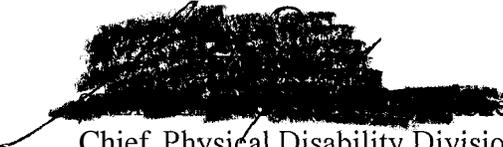
Under the provisions of Title 10, USC, the services may compensate member for disabilities "**incurred while entitled to basic pay.**" Further, if the service is found to have

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permanently worsened a pre-existing condition, the military may compensate the member but, only for the degree of permanent aggravation above and beyond the natural progression of the disease.

A thorough review of the AFBCMR file revealed no errors or irregularities in the processing of the applicant's case within the disability evaluation system. He was appropriately found unfit for continued military service and properly rated under federal disability rating guidelines. The medical aspects of this case are fully explained by the Medical Consultant; we agree with his advisory.

RECOMMENDATION: We recommend denial of the applicant's request. The applicant has not submitted any material or documentation to show he was inappropriately rated or processed under the military disability evaluation system at the time of his disability discharge.

 ISAF
Chief, Physical Disability Division
Directorate of Pers Prog Management

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